

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION
STATEMENT OF DECISION

IN THE MATTER OF THE JUNE 4,)
1992 PETITION OF THE CITY OF)
CORDOVA FOR THE ANNEXATION)
OF APPROXIMATELY 180 SQUARE)
MILES)

SECTION I
INTRODUCTION AND DESCRIPTION OF AREA

In June of 1992, the City of Cordova petitioned the Local Boundary Commission to annex an estimated 180 square miles. The topic of annexation in general had been a matter of public discussion and planning in Cordova off and on during a period of more than 15 years preceding the filing of the petition. Newspaper accounts indicate that public discussions by the Cordova City Council leading up to the current annexation effort took place as early as January 22, 1992.

The territory proposed for annexation lies within the unorganized borough, outside the jurisdiction of any municipal government. The 180 square mile area generally extends north past Deep Bay into Nelson Bay, south to Point Whitshed, the mouth of the Eyak River and parts of the Copper River Delta. The area extends east past the Cordova Airport. A map showing the boundaries of the territory proposed for annexation appears in Section IV of the Statement of Decision.

The City of Cordova estimates that the area proposed for annexation is inhabited by 469 residents living in some 90 - 95 homes. Notable features in the area include:

- *Shepard Point:* This area is the site of a proposed new deep water port and staging area.
- *Channel Island:* An existing log transfer facility is located in this area. A new log transfer facility for the area is proposed.
- *Deep Bay:* Limited residential development is found in this area.
- *Humpback Creek:* This area is the site of a recently constructed hydroelectric plant. The Cordova Electric Cooperative facility supplies up to 20 percent of Cordova's electrical power.
- *Power Creek:* A hydroelectric power generation facility has been proposed for this area.
- *Whitshed Road:* This area includes clustered residential development adjacent to the roadway. The area also includes sites suitable for development, including a number of parcels near Nicolet Creek which are planned for sale by the University of Alaska. Whitshed Road is paved to approximately mile 2.5.
- *Planned U of A Subdivision:* The University of Alaska has proposed a new 30 lot subdivision adjacent to Whitshed Road. This proposed development is different than the U of A land noted earlier which is located near Nicolet Creek. City officials have indicated that the University favors annexation of its property and is also exploring the formation of a local improvement district to fund the extension of water and sewer utilities to the subdivision.
- *Heney Creek Area:* This area includes clustered commercial development. There is significant commercial activity in the area, including boat repair facilities and an existing marina. A new marina is also proposed in this area.

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- *Hartney Bay*: A 350-lot subdivision is located on Hartney Bay. Lots in the subdivision are platted and held by individual owners in fee simple status. The subdivision is largely undeveloped due to platting problems, the lack of utilities, limited road access and other problems.
- *Point Whitshed*: A small lodge is located at this site.
- *North Shore Eyak Lake*: Dispersed residential development is found in the area north of the lake.
- *Eyak Lake*: This is a "Class A" water source, one of four serving residents of the City. Part of the lake is currently within the boundaries of the City, however, two-thirds of the lake and much of its watershed are located outside the boundaries of the City.
- *5 1/2 Mile Development*: This area is the site of clustered residential and commercial development along the Copper River Highway.
- *6 1/2 Mile Development*: This area is the site of clustered residential subdivisions and commercial development along the Copper River Highway. This area has a very high water table and no central sewage disposal system, making proper wastewater disposal difficult.
- *Cordova Airport Reserve*: This area includes FAA housing and facilities, Coast Guard hanger and facilities, Alaska Department of Transportation and Public Facilities maintenance station, GCI facilities and city sludge dump.
- *Sheridan Glacier*: This area encompasses a glacial lake, U.S. Forest Service campground and trails. The area has potential for development as a tourist attraction.
- *Eccles Lagoon*: This area currently contains five residential dwellings.
- *Saddle Point Subdivision*: This area currently contains nine residential dwellings.
- *Heney Range Municipal Watershed*.
- *Copper River Delta Critical Habitat Area*.

SECTION II PROCEEDINGS

On June 3, 1992, the Council of the City of Cordova adopted Resolution 92-26, authorizing the filing of the annexation petition. The petition was submitted to the Department of Community & Regional Affairs (DCRA) on June 5, 1992. A copy of the petition and supporting materials were made available for public review at the Cordova City Hall.

On June 8, 1992, DCRA made a determination that the form and content of the petition were in substantial compliance with the requirements of law. Consequently, DCRA notified the City of Cordova on June 8 that its petition had been accepted for filing.

Also on June 8, 1992, DCRA mailed notice of the filing of the petition to nearly 50 parties, including newspapers and radio stations serving Cordova. Major property owners and other potentially interested parties were also provided notice. On June 10, 1992, the Cordova City Clerk posted the notice conspicuously at the following fourteen locations:

Cordova City Hall
Cordova Post Office
Cordova Library
Cordova District Fishermen United Union Hall
Cordova Electric Cooperative
Davis' Grocery Store
Cordova Harbormaster's Office
Orca Book & Sound Store
Alaska Airlines Terminal in Cordova

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Markair Terminal in Cordova
Alaska Ferry Terminal in Cordova
City Airport Taxi Services
Ketchum Air Terminal
Cordova Air Terminal

Notice of the filing of the petition was also published by the City of Cordova as follows:

Anchorage Daily News

- June 12, 1992
- June 14, 1992

Cordova Times

- June 24, 1992
- July 1, 1992
- July 8, 1992

Additionally, DCRA arranged for publication of the notice in the *Alaska Administrative Journal*.

The City of Cordova placed an abbreviated version of the notice of the filing of the petition on the local television scanner operated by Cablevision. This notice ran from June 11 to June 18, 1992. The City also arranged for public service announcements concerning the filing of the petition to be broadcast on KCHU-FM and KLAM-AM, the two radio stations serving Cordova. The radio public service announcements were requested to be broadcast "*as often as reasonably possible for the next three days and at least once each week for the next four weeks*" beginning June 10.

The notice of the filing of the petition invited parties to file briefs or written comments concerning the petition by August 3, 1992. Although no formal briefs were filed, approximately 50 letters commenting on the annexation proposal were submitted in a timely manner. Most of the letters were from residents of the area proposed for annexation, although a few came from individuals living within the boundaries of the City. Virtually all of the letters expressed opposition to the annexation proposal.

In addition to the letters, more than 110 postcards expressing opposition to the annexation were submitted prior to the August 3 deadline. The postcards carried the identical message which read: "*I am a property owner within the City of Cordova's proposed annexation area and would like to go on record as being opposed to the annexation.*"

The City of Cordova filed a written response to the local comments on August 26, 1992.

After reviewing the petition and considering the written comments, DCRA published its draft report on the matter. The report and an appendix which included a copy of all of the letters responding to the petition were distributed to 91 individuals on September 23, 1992. Copies were sent to an additional eight parties on September 25. The 99 parties to whom the report and appendix were sent included the news media serving Cordova, individuals who had written comments concerning the annexation proposal and other interested parties. Multiple copies were provided to the Cordova public library and the City of Cordova.

Parties were invited to review and comment on the draft report by October 23, 1992. Timely comments were filed by three parties.

After considering the comments on the draft report, DCRA released its final report on the matter on October 28, 1992. Copies of the final report were provided to some 104 parties.

In the interim, the Local Boundary Commission had scheduled a public hearing on the annexation to be held on November 21 at the Cordova Elementary School. Details of the date, time and place of the hearing had been provided in DCRA's September 23 draft report as well as its October 28 final report.

In addition to publishing details of the hearing in its reports, DCRA sent notice of the hearing to 98 parties on October 13, 1992. DCRA also requested that KCHU-FM and KLAM-AM broadcast notice of the hearing from October 31 through November 21.

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Notice of the hearing was also posted by the Cordova City Clerk's office on October 30, 1992, at the following locations:

Cordova City Hall
Cordova Post Office
Cordova Library
Cordova District Fishermen United Union Hall
Cordova Electric Cooperative
Davis' Grocery Store
Cordova Harbormaster's Office
Orca Book & Sound Store
Alaska Airlines Terminal in Cordova
Markair Terminal in Cordova
Alaska Ferry Terminal in Cordova

Further, notice of the hearing was published by DCRA as follows:

Cordova Times

- October 22, 1992
- October 29, 1992
- November 5, 1992

Anchorage Daily News

- October 19, 1992

Alaska Administrative Journal

The Commission held its hearing on the date and at the time and place scheduled.¹ Approximately 80 persons attended the hearing. Many of those in attendance testified at the hearing. The hearing lasted approximately four and one-half hours. Although there were no formal respondents in this proceeding, the Commission treated Lee Wyatt as a respondent during the hearing. Mr. Wyatt was thus able to organize and facilitate testimony on the part of those who were critical of the annexation proposal.

At the close of the hearing, the Commission announced that it would accept additional written comments concerning the matter until December 17, 1992. The Commission also announced that it would hold a decisional session on January 4, 1993 to act on the petition. Notice to this effect was posted by the City of Cordova at ten of the eleven locations noted earlier for the posting of the notice of the November 21, 1992 hearing.² A copy of the notice was also sent to Lee Wyatt, Diane Wiese (another organizer of parties critical of the petition), KCHU-FM, KLAM-AM, the Cordova Times and the Alaska Administrative Journal.

Two days after the hearing (November 23), the Chairman of the Commission wrote to officials of the City of Cordova asking them to further address matters relating to the delivery of services and the prospect for differential tax zones. The letter also encouraged City officials to conduct further public meetings to address a number of issues of a local policy nature which had been raised during the hearing.

In response to the November 23 letter from the Commission, officials of the City of Cordova held four additional public meetings. These occurred on December 7, 10 (two meetings), and 11, 1992.

By December 17, forty-eight letters had been filed during the 26 day period in which the record was left open following the hearing. The written materials included letters from the City of Cordova responding to the November 23 letter from the Chairman of the Commission.

¹ Commission members Hargraves, Dugan, Hallgren and Johnson were present at the hearing. Although Commissioner Cotten was not present, he reviewed DCRA's tape recording of the hearing and also reviewed all of the written material submitted to the Commission prior to the Commission's decisional session on the petition.

² The exception being the Alaska Ferry Terminal in Cordova, which had since closed for the winter season.

Copies of all of the letters were made available for public review in Cordova and Anchorage. Notice of the opportunity to review these comments was published in the December 23 issue of the Cordova Times. The notice was also posted in the same ten places where notice was posted of the December 17 deadline and January 4 decisional meeting. A copy of the notice was also mailed to 8 representatives of parties critical to the annexation. The notice invited any party to comment if they felt that new and potentially misleading information had been submitted in any of the forty-eight letters filed during the 26-day comment period ending December 17. Four letters were filed in response to this notice.

The Commission met on January 4, 1993 to act on the petition.³ After due consideration of the matter, the Commission voted unanimously among the members present to approve the petition with reduced boundaries.

SECTION III FINDINGS AND CONCLUSIONS

On the basis of the petition and brief of the City of Cordova, the report and recommendation of the Department of Community and Regional Affairs, the extensive written comments, and the testimony received at its November 21 hearing, the Local Boundary Commission makes the following findings and conclusions.

1. REGARDING THE WILLINGNESS AND ABILITY OF THE CITY OF CORDOVA TO EXTEND "FULL MUNICIPAL SERVICES" TO THE AREA PROPOSED FOR ANNEXATION AS REQUIRED BY FORMER 19 AAC 10.080.⁴

It must be shown to the satisfaction of the Local Boundary Commission that the City of Cordova is both willing and able to extend "full municipal services" to the area proposed for annexation. Those services are defined as "all of the services that a municipality is providing to its residents with revenues raised from the municipality's general mill levy or sales or use taxes" (former 19 AAC 10.840(9)). It does not include services funded by user fees. Neither does it require the City to build roads, sidewalks, utility service extensions or other capital projects to the area proposed for annexation. Further, allowances are permitted if the City is willing to implement differential property tax rates to reflect lesser levels of service.

Because the law allows parties other than a city government to petition for annexation of territory, it is necessary to ensure that the City of Cordova is willing to extend services. In this instance, the City of Cordova initiated the petition for annexation. Throughout the proceedings, the Council of the City of Cordova has expressed its full support for the annexation of territory. These circumstances create a very strong presumption that the City is indeed willing to serve the area. The Commission has found nothing to indicate that this presumption is incorrect.

Consideration of the City's ability to provide full municipal services logically begins by identifying those services to which the standard applies (i.e., those funded by property and sales taxes). It is understood that these consist of the following:

- Public Schools
- Museum
- Swimming Pool
- Bidarki Recreation Center

³ Commissioners Hargraves, Dugan, Hallgren and Cotten were present. Commissioner Johnson was absent.

⁴ Due process considerations compel the Commission to use the standards for annexation set out in former 19 AAC 10.065 - 090 while acting on this petition (as opposed to the standards set out in the new regulations which took effect September 14, 1992). The former regulations were in place at the time the petition was prepared and filed by the City of Cordova. They were also in place during the period of public review and comment on the petition. Further, those standards were used by the Department of Community & Regional Affairs to evaluate the petition and to make its recommendation to the Commission.

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- Ski Hill
- Fire Protection
- Emergency Rescue
- Emergency Medical Services
- Emergency Services Dispatch
- Jail
- Police Protection (including Trooper assistance)
- Road Maintenance
- Economic Development
- Planning, platting and land use regulation
- Library
- General Government

A determination of the extent to which the City of Cordova is capable of extending these full municipal services warrants consideration of the following factors:

- A. The extent to which the services are already being provided to the territory;
- B. Geographic features which might limit the City's ability to serve the territory; and
- C. The financial impacts that annexation might reasonably be expected to have on the City.

A. Services currently being provided

The vast majority of the residents of the territory proposed for annexation currently receive, at least on some level, nearly all of the services provided by the City of Cordova which are funded wholly or partially by local sales and property taxes. These include the Cordova public schools (in which some 90 non-City students are educated), the Cordova museum, swimming pool, Bidarki Recreation Center, Ski Hill, fire protection, road maintenance (in that residents outside the City use the 11.1 miles of City-maintained streets and roads within the existing City limits), emergency rescue, emergency medical services, emergency services dispatch, jail, emergency police protection/State trooper assistance, library, general government, planning and economic development.

A limited number of these services are, however, provided to the residents of the territory proposed for annexation at various levels which are less than the levels of service provided to the in-City residents. Most notable among these are road maintenance (in that there are an estimated 2.5 miles of platted roadway in the territory proposed for annexation which are maintained exclusively by property owners and residents), police protection, planning and general government services. Further, because the territory proposed for annexation is more distant from the City's fire station and also lacks developed water utility systems with fire hydrants, it can be argued that the level of fire protection provided to this area is also somewhat less than that provided to the residents within the current City limits.

Further, a very limited number of the services funded in whole or part by sales and property taxes are not provided at any level to the residents of the territory proposed for annexation. These appear to be limited to platting and land use regulation.

B. Limiting Geographic Features

Large portions of the 180 square miles petitioned for annexation are remote and undeveloped, with limited access. In its report to the Commission, DCRA recommended the exclusion of 101 square miles in large part because the geographic characteristics of those areas limit the ability of the City of Cordova to effectively serve the territory.

The City of Cordova has subsequently endorsed DCRA's recommendation, except that it now suggests a further reduction of an estimated 10.82 square miles encompassing the Hartney Bay area.

C. Financial Impacts

This is an issue over which there has probably been more debate and less agreement than any other aspect of the annexation proposal. Many who are critical of the annexation proposal insist that revenue projections prepared by DCRA and the City of Cordova are grossly overstated. Others critical of the annexation proposal argue that the expense of serving the territory in question will be prohibitive.

The estimate of the taxable value of real property in the territory proposed for annexation was prepared by Michael C. Renfro of Appraisal Company of Alaska. Mr. Renfro has served under contract as the Assessor of the City of Cordova for the past several years. He currently serves in a similar capacity for a number of other municipalities in Alaska, including the Bristol Bay Borough, City of Unalaska, City of Dillingham, City of Nome, City of Valdez, City of Wrangell and the North Slope Borough. Mr. Renfro has extensive education in the field and is certified by the State of Alaska as a real estate appraiser. He is qualified as an expert witness regarding property appraisals for the State Superior Court and the federal court.

Mr. Renfro's estimates of the value of improved real property in the territory were prepared on the basis of "drive-by exterior inspections." Values were then assigned based upon market sales data. The value of unimproved real property was also estimated on the basis of available market sales data.

Mr. Renfro has acknowledged that these estimates are not as exact as performing a complete appraisal, however, he states that it should be "within acceptable parameters."⁵ The State Assessor, employed by DCRA, carefully examined Mr. Renfro's methodology in this matter and concurred that it was reasonable.

Documents submitted to the Commission by the City of Cordova show that Mr. Renfro's estimates of the value of taxable real property in the territory ranged from \$43,117,500 to \$34,494,000. For purposes of the petition, the City of Cordova used the figure of \$36,083,000. That figure is 16.3 percent below Mr. Renfro's high-range estimate and 4.6 percent above his low-range estimate.

Some critics have noted that no apparent allowance was made for the required exemption from taxes of real property owned and occupied as the primary residence and permanent place of abode of a resident 65 years of age or older. Some claim that the value of such property in the territory proposed for annexation is substantial. One critic wrote that he disagreed with the Cordova City Manager's estimate that 6 properties would be exempt under that provision. The critic put the number of such properties at 20, which he estimated had a value of \$5,000,000.⁶

Under current law, the State of Alaska reimburses municipal governments for a portion of the loss incurred from the mandatory exemption of property of senior citizens. Under the current level of funding, the reimbursement amounts to about 17 percent of the loss. While Governor Hickel's Fiscal Year 1994 proposed State Operating Budget calls for the elimination of any reimbursement for the senior citizen property tax exemption, it is uncertain whether the cut will be made by the legislature. It has been reported that Governor Hickel will introduce and support legislation to make the now-mandatory exemption a local option.

Having carefully considered all of the critics' arguments concerning the issue of the taxable value of property in the territory, Gary Lewis, the Cordova City Manager, remains confident that the estimate of \$36,083,000 is reasonable. In taking this position, he stressed that Mr. Renfro was instructed to be "conservative" when preparing the estimate.

The Commission notes that Mr. Lewis is also an expert in the field of property tax assessment. Mr. Lewis began working in the office of the Assessor of Matanuska-Susitna Borough in 1978. Some four years later, Mr. Lewis was appointed to the post of Borough Assessor, a job he held for some eight years when he became the Cordova City Manager in early 1992. Mr. Lewis is certified by the Alaska Association of Assessing Officers as a Certified Assessor/Appraiser, Level III (highest level attainable). Mr. Lewis' level of certification is identical to that held by Mr. Renfro.

Thus, the Commission finds that \$36,083,000 estimated value of taxable property in the territory proposed for annexation is reasonable.

Another major point of contention is the estimate of the sales tax revenues which are likely to be generated in the territory proposed for annexation. In a memorandum dated

⁵ Letter from Michael Renfro to Dan Bockhorst dated September 24, 1992.

⁶ Undated letter from Ken Roemhildt received by fax on December 17, 1992.

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September 10, 1992 officials of the City of Cordova estimated such potential revenues at \$231,500 annually.

In preparing the estimate, City officials first identified businesses in the area proposed for annexation using the State of Alaska business license directory for the greater Cordova area. Documents filed by the City in December listed approximately 50 businesses in the area. City officials indicated that they used data on sales taxes collected by individual businesses within the existing boundaries of the City of Cordova to estimate potential revenues for what they believed were comparable businesses in the territory proposed for annexation. Details of these comparisons were not made available to DCRA because sales tax data are confidential under the terms of the Cordova City Code.

Theoretically, the methodology used by the City of Cordova to develop its sales tax estimate appears both reasonable and sound. However, criticisms of the manner in which the theory has been applied have gone largely unrefuted by the City of Cordova. These include criticisms that certain of the businesses no longer exist, a number of the businesses would be exempt from taxation and many others are very small operations which would generate little in the way of sales taxes.

One critic of the City's sales tax revenue estimate identified 17 of the 50 businesses as rentals, most of which were single or double family units.⁷ This same critic noted that 8 of the businesses identified by the City were unknown and had no telephone listing in either the Cordova telephone directory or "Alaska Telephone Directory Assistance." This person went on to state the belief that a more realistic estimate of sales tax revenues would be \$37,000.

In December, officials of the City of Cordova acknowledged that "[A]t the present time, until actual gross sales tax reports are filed or tax returns are audited, the actual amount of sales tax revenues [to be generated in the territory proposed for annexation] is, at best, a guess." The City also notes that "numbers ranging from \$36,000 to \$380,000 have been mentioned."⁸

In the absence of greater assurances from the City of Cordova with respect to the validity of its sales tax estimate, the Commission is unable to find that the \$231,500 figure is a reasonable estimate. However, almost no one disputes that the actual figure will be at least \$37,000. It is possible the figure will be higher.

DCRA originally estimated that, based upon current funding levels, the City would gain \$27,300 in State Municipal Assistance program funding; \$8,556 in State Revenue Sharing funding, \$13,500 in federal payments for education in lieu of taxes (PL 81-874) and \$8,000 in miscellaneous revenues.

The entitlement for State Revenue Sharing will decrease somewhat if the sales tax revenues in the area proposed for annexation are less than first estimated by the City. On the other hand, the figure will increase with the assumption of responsibility for the maintenance of the estimated 2.5 miles of roads in the area. With both adjustments, DCRA now estimates that annual Revenue Sharing funding to the City will increase by \$6,033 as a result of annexation.

The Commission is aware that Governor Hickel's Fiscal Year 1994 State Operating Budget calls for a 25 percent reduction in funding for the State Revenue Sharing and Municipal Assistance programs. However, funding levels will be determined by the legislature, in concert with the Governor.

⁷ Letter from Diane E Wiese and John Paul Wiese, Rural Alaskans to the End, received by fax December 17, 1992.

⁸ City of Cordova -- Information Related to City Finances, dated December 10, 1992.

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Thus, it appears reasonable to estimate that the City of Cordova will gain at least the following revenues as a result of annexation:

Property Taxes ⁹	\$396,913
Sales Taxes	37,000
Miscellaneous	8,000
State Mun. Assist.	27,300
State Rev. Sharing	6,033
PL 81-874 (schools)	<u>13,500</u>
TOTAL REV.	\$488,746

With respect to the cost of extending services to the territory proposed for annexation, it is again noted that nearly all of the services are already provided on some level to the area outside the City's boundaries. Many of the services are provided to residents outside the City to the same extent they are provided to residents within the City.

One major "expense" resulting from annexation will be the loss of an estimated \$164,000 annually in education foundation aid beginning in Fiscal Year 1996. One additional significant expense will be incurred in the maintenance of the estimated 2.5 miles of platted local roads in the territory proposed for annexation.

There is little consensus locally over the potential cost of such road maintenance. A 1985 study commissioned by the City of Cordova examined the potential cost of maintaining these roads. DCRA reported that adjusting the 1985 figure for inflation would result in a contemporary cost figure of \$4,000 per mile ($\$4,000 \times 2.5 \text{ miles} = \$10,000$). One critic of annexation who claimed expertise in estimating the cost of snow removal dismissed the inflation-adjusted 1985 figure, as well as a figure of \$5,000 per mile reportedly offered by the City.¹⁰ This critic estimated the cost of snow removal alone at \$8,000 per mile.

Beyond education and road maintenance, expenses will be incurred in the assessment of property taxes, the collection of sales and property taxes, platting, land use regulation, elections and other general governmental functions.

Certain of the services such as police protection may be carried out without any increase in staff or equipment. Officials of the City of Cordova are currently examining existing City staff levels as they undergo financial planning for the delivery of future services. In other cases, City officials are weighing alternative methods of enhancing services to the outlying area. For example, in the case of fire protection, options being explored include the provision of additional staff and equipment, or installing residential sprinkler systems.

The Commission finds that it is reasonable to estimate that annexation will increase education costs by \$164,000 and road maintenance costs by up to \$25,000 (at \$10,000 per mile). However, the Commission is unable to make findings with respect to specific estimates of the cost of extending other services to the territory proposed for annexation. This is not uncommon in annexation proceedings, nor does it limit the Commission's ability to make necessary conclusions regarding the standard at issue.

It is stressed that the estimated revenues (\$488,746) exceed the estimated costs of education and road maintenance (\$189,000) by nearly \$300,000. Three hundred thousand dollars reasonably seems more than is necessary to provide other services to the level required to meet the standard set out in former 19 AAC 10.080. The actual costs of extending the other services will depend in large measure on future decisions to be made at the local level regarding the delivery of services. The City of Cordova, like the vast majority of Alaska's 165 municipal governments, is faced with growing financial challenges in serving their local residents. In all likelihood, the revenues will exceed the cost of extending full municipal services to the area in question, in which case the balance of funds can be used to underwrite the cost of providing existing services to the territory.

Resolution 92-56, adopted by the Council of the City of Cordova on December 16, 1992, is of paramount importance to the deliberations of the Commission regarding the standard at issue. That Resolution adopted an "Annexation Services Operation Plan"

⁹ Based upon current property tax levy of 11 mills.

¹⁰ Letter from Christine Honkola dated December 17, 1992.

which commits the City to provide full municipal services or to institute "differential property taxation for non-deliverable services." The resolution also commits the City to providing snow removal and maintenance of constructed and dedicated [non-State-maintained] rights-of-way in the area to be annexed. Prior to the adoption of the Resolution, City officials had indicated that they would not maintain the roads in question because those roads were not constructed in accordance with standards set by the City. This was an issue of concern raised in the November 23, 1992 letter from the Commission Chairman to City officials.

Some critics viewed Resolution 92-56 as a "shallow promise" and even went so far as to fault the City for using the word "will" instead of "shall" in its commitment to deliver services and/or to institute differential property tax rates.¹¹ However, the Commission finds that the Resolution is made in good faith and adequately expresses the commitment of the City of Cordova to extend services in a fair and equitable fashion to the residents of the territory proposed for annexation.

CONCLUSION: Because the City of Cordova initiated the annexation proposal, the Commission concludes that the City is willing to serve the area proposed for annexation. Further, the Commission concludes that the geographic characteristics of the remote and inaccessible portions of the territory proposed for annexation limit the City of Cordova's ability to serve those areas. The Commission also concludes that the City of Cordova has the financial capacity to extend full municipal services to the territory proposed for annexation. Finally, the Commission concludes that a smaller annexation than that petitioned by the City would encompass the financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard set out in former 19 AAC 10.080 is satisfied.

2. REGARDING WHETHER THE CITY OF CORDOVA PROVIDES SERVICES TO THE RESIDENTS AND PROPERTY OWNERS OF THE TERRITORY WITHOUT COMMENSURATE PROPERTY TAX CONTRIBUTIONS.

The standard set out in former 19 AAC 10.070(a)(8) is met if "*residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate property tax contributions, whether city services are rendered or received inside or outside the territory.*"

Individuals who live inside as well as those who live outside of the City boundaries contribute in support of City services in significant ways through the payment of sales taxes and user fees. The Fiscal Year 1991 audit of the City of Cordova shows that the City collected \$1,493,566 in sales taxes from July 1, 1990 through June 30, 1991. During the same period, the City also collected \$3,515,624 in enterprise fund revenues, including \$1,988,585 in hospital enterprise fund revenues.

However sales tax revenues and user fees fall far short of the resources needed to fund services provided by the City of Cordova. To bridge the gap, the City of Cordova levies an ad valorem tax on real property. The property tax rate currently in place is 11 mills (1.1 per cent of the true value of the property). The tax is expected to generate \$827,420 during the current fiscal year.

As noted in the discussion of the previous standard, the City's property tax (and sales tax) provides partial funding for a multitude of services. These include:

- Public Schools
- Museum
- Swimming Pool
- Bidarki Recreation Center
- Ski Hill
- Fire Protection
- Emergency Rescue
- Emergency Medical Services

¹¹ Letter from Lee A. Wyatt dated December 31, 1992.

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- Emergency Services Dispatch
- Jail
- Police Protection (including Trooper assistance)
- Road Maintenance
- Economic Development
- Planning, platting and land use regulation
- Library
- General Government

In the examination of the previous standard, the Commission previously noted that nearly all of these services are provided to some extent to the residents and property owners of the territory proposed for annexation.

In addition to the services listed, DCRA reported that the City's Fiscal Year 1991 audit showed that several enterprise services of the City (all of which are available to residents of the territory proposed for annexation) required nearly \$280,000 in local subsidies. Since FY 91, the City has increased refuse collection fees with the intention of reducing, but not eliminating, the subsidy for that service.

Further, DCRA reported that the local hospital, which is owned by the City of Cordova, operated at a loss of \$668,334 during the fiscal year ending June 30, 1991 (excluding depreciation, the loss was \$106,252). The City does not currently provide direct financial support to the hospital, although it does pass-through State Revenue Sharing funds to the hospital.

Notwithstanding current conditions, the City may be compelled to provide financial support to the hospital at some point in the future. It is noted again that the Governor's Fiscal Year 1994 budget calls for a 25 percent reduction in State Revenue Sharing funds. If the cut comes about, it would reduce the pass-through funds for the hospital.

The current lack of the need for City support of the hospital is due in large measure to the modern nature of the hospital building and facilities. As these age, the pressure for some level of financial support by the City is likely to increase. DCRA reported that a number of municipal hospitals in Alaska receive subsidies from their local governments.

During the halcyon days of the early 1980's, high levels of State financial assistance allowed the City of Cordova to limit its local participation in the funding of services. Local funding was limited largely to sales taxes and user fees. During Fiscal Years 1981, 1982, 1983 and 1984, the City's property tax rate was only 1 mill.

As State funding for local governments has steadily declined, the property tax rates of the City of Cordova have steadily increased. Currently, the tax rate stands at 11 mills. More significantly, the current tax rate is heavily subsidized by an infusion of cash from the principal of the City's "rainy day fund." City officials indicate that without that subsidy, the current property tax rate would stand at approximately 17 mills.

CONCLUSION: The Commission concludes that residents and property owners within the territory proposed for annexation receive many services and benefits from the City of Cordova directly and indirectly. While those residents and property owners contribute substantially in support of those services through the payment of sales taxes and user fees, such contributions fall far short of the actual cost of providing the services. The gap is closed only by the City of Cordova's ad valorem tax on real property. While the City's ad valorem tax was minimal a decade ago, today it stands at 11 mills. Without the subsidy from the City's declining "rainy day fund", the tax would be about 17 mills. Thus, the Commission concludes that the standard set out in former 19 AAC 10.070(a)(8) is met.

3. REGARDING THE NEED FOR SERVICES WHICH CAN BE PROVIDED MOST EFFICIENTLY BY THE CITY OF CORDOVA.

If the territory proposed for annexation needs municipal services and the City of Cordova can provide those services more efficiently than another municipality, the standard set out in former 19 AAC 10.070(a)(4) is satisfied.

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The discussion of the previous standard addressed services which the City is currently providing to the area proposed for annexation. This standard concerns whether there are unfulfilled needs for services in the area proposed for annexation. If such needs do exist, the standard also requires consideration of whether the City of Cordova could satisfy those needs more efficiently than another municipality.

The City notes in its petition that "[T]he territory to be annexed, particularly the developed areas along Whitshed Road and the Copper River Highway, is in need of additional services that the City of Cordova can provide. There are no other municipalities in the immediate vicinity which can offer these services." The petition goes on to identify the unfulfilled service needs as follows:

- water and sewer utilities,
- road maintenance,
- planning, platting and land use regulation,
- improved fire protection, and
- possibly, police protection.

Cordova City Manager Gary Lewis stated that "it appears that of all the services the city could provide, water and sewer are the ones that residents in the area to be annexed are most interested in."¹²

The City of Cordova's Eyak Lake AMSA Cooperative Management Plan (March, 1985) states that "[T]here is evidence of fecal contamination in nearly all peripheral inhabited areas of the lake (ADEC). The presence of fecal coliforms in water is a good indication that fecal material and possibly disease germs may also be present. The higher the coliform count, the greater the danger in untreated water. Fecal coliform were found at each of the twenty sample sites ranging to a high of 245 f.c./100 ml. based on a minimum of 5 samples taken in a period of 30 day for both drinking water, seafood processors and contact recreation (swimming, etc.). . . ." (page 41).

DCRA reported that an official of the Alaska Department of Environmental Conservation (DEC) confirmed that there continues to be a need to address water and wastewater issues in the area of Mile 6 of the Copper River Highway. It was reported that the Eyak Estates and Pebo subdivisions in this area generally have high water tables which create difficulties in the proper disposal of wastewater. It is believed that the two subdivisions contain roughly 60 lots, some of which are vacant.

Additionally, the DEC official indicated that potential problems may exist in the residential development in the vicinity of 4.5 - 5 Mile area of the Copper River Highway. It was estimated that this area has some 25 - 35 homes, many of which have septic tanks located 50 feet or less from Eyak Lake. Eyak Lake is a "Class A" water source, one of four serving the residents of the City of Cordova. For new construction, current laws require that septic systems be set back at least 200 feet from a Class A water source.

The DEC official indicated that recent tests have shown relatively high levels of chlorine in Eyak Lake. The source of the chlorine has not been determined, but it was speculated that it may be from individual wastewater treatment systems in the area. Eyak Lake is reportedly the City's only source of water which has the filtering equipment necessary to comply with new U.S. Environmental Protection Agency standards concerning drinking water.

The City has indicated that it has no plans for the immediate extension of water and sewer services to the area in question.¹³ However, the extension of water and sewer utilities to a planned University of Alaska Subdivision along Whitshed Road has been discussed. The City of Cordova would qualify for 50% funding from the State of Alaska for the extension of sewer facilities. Only municipal governments are eligible for such funding. Additionally, City officials have indicated they will use other means available to the City (e.g. legislative grants, sale of low-interest municipal bonds, et cetera) to further support the construction of water and sewer utilities. However, any local share would

¹² Letter from Gary Lewis dated August 26, 1992.

¹³ As noted in the discussion of the first standard, however, this is not required since water and sewer utilities are funded by user fees and the extension of services would require capital improvement funding.

typically be paid by the owners of the property which benefits from the utility extension through the establishment of a local improvement district.

With respect to municipal planning, platting and related services, the area proposed for annexation is presently part of the unorganized borough. As such, it has no local planning, platting or land use regulation authority. The Alaska Department of Natural Resources (DNR) does exercise limited platting authority in this area presently (replats of existing subdivisions and vacations of rights-of-way only). DCRA reported that DNR indicated that the area proposed for annexation "is fairly active" with respect to such matters.

The need for and plans relating to road maintenance and fire protection in the territory proposed for annexation were discussed previously.

The City states that the need for police services in the area would arise in the event that the State Trooper position stationed in Cordova is eliminated. Officials of the Alaska Department of Public Safety confirmed that discussions have occurred at both legislative and executive branch levels regarding the future of the Cordova Trooper position.

Consideration of the question of whether there is another municipality which can provide needed services more efficiently than the City of Cordova is easily addressed. Neither the City of Cordova nor the area proposed for annexation are within an organized borough. Thus, there is no regional municipal government which might provide needed services.

Forming an independent city government to serve the area proposed for annexation would not appear to be an option, given provisions of the State Constitution and Statutes. These include Article X, Section of the Constitution which prescribes a "*minimum of local government units*" and AS 29.05.021(a) which provides that "[A] community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city."

CONCLUSION: The residents outside the City boundaries receive no platting services, land use regulation, water & sewer utilities, enhanced fire protection or City police protection. It seems reasonable to conclude that most or all of those services are needed by many of the residents and property owners in the territory proposed for annexation. For example, in the absence of a full platting, planning and land use authority, substantial development can and has occurred in the area proposed for annexation without the benefit of formal local control.

Problems resulting from the lack of land use regulation are evident in certain of the wastewater disposal problems along Eyak Lake which were noted earlier. Additionally, there seems to be a need for improved methods of wastewater disposal in the area of 4.5 - 6 Mile of the Copper River Highway. Although the City has no immediate plans to address those needs, it is the most logical entity to assume responsibility to deal with the matter. Only a municipal government would qualify for 50% sewer construction aid available from the Alaska Department of Environmental Conservation.

As the State's ability to provide direct local services continues to decline because of falling revenues, there is some possibility that Trooper service in the area outside the City of Cordova may be curtailed. A draft study by the State Office of Management and Budget calls for the Department of Public Safety to "[E]stablish a task force to review the issue of state vs. local responsibilities for provision of police services."¹⁴ The City of Cordova would clearly be best able to extend police services in such an event. So too is the City of Cordova best able to provide other services needed in the area proposed for annexation. Constitutional and statutory provisions would not allow residents of this area to form an independent city government.

¹⁴ Draft Report, Governor Hickel's Organizational Efficiency Task Force, July 1, 1992 (page IV-64).

Considering these factors as a whole, the Commission concludes that there are unfulfilled service needs in the developed portions of the territory proposed for annexation and that the City of Cordova could serve those needs more efficiently than another municipality. Thus, the standard set out in former 19 AAC 10.070(a)(4) is satisfied.

4. REGARDING WHETHER THE TERRITORY IS "URBAN" IN CHARACTER.

The standard set out in former 19 AAC 10.070(a)(3) is met if the Local Boundary Commission concludes that the area proposed for annexation is "urban" in character. Factors to be considered in this regard include, without limitation, whether:

- the property is platted;
- the property is suitable for residential or commercial purposes;
- the population density approximates that of the annexing city;
- the population stems from actual growth of the city beyond its legal boundaries;
- whether the property is valuable by reason of its suitability for prospective urban purposes.

The City states in its petition that *"the road area in particular is very integrated socially and economically with the City of Cordova. It is served by both the Cordova Electric Cooperative and the Cordova Telephone Cooperative. These areas are also very similar in character to Cordova. They consist of commercial and industrial areas, residential subdivisions, and dispersed residential development. Virtually all developed areas have been platted by their owners or the State of Alaska. The growth in these areas is largely attributable to economic activity in Cordova and the lack of suitable land for development in Cordova proper."*

The population densities of the developed areas do not equal the nearly 400 residents per square mile found within the existing boundaries of the City. Much of the territory proposed for annexation is remote and uninhabited. However, many of the residents of the territory proposed for annexation reside in platted subdivisions. These subdivisions and other inhabited and developed portions of the territory proposed for annexation seem to be sufficiently similar in character to the area within the existing boundaries of the City of Cordova to consider them urban.

More importantly, the Commission finds that the developed portions of the territory proposed for annexation are clearly part of the compact community of Cordova. Apart from the invisible corporate boundaries of the City of Cordova, the developed portions of the area proposed for annexation share many social, economic, political, religious, governmental, scholastic, recreational and other interests with residents and property owners inside the boundaries of the City of Cordova.

CONCLUSION: The Commission concludes that portions of the area proposed for annexation are similar in character to the territory within the current boundaries of the City of Cordova. For purposes of the standard in question, these areas are considered "urban" in character. Thus, the Commission concludes that the standard set out in former 19 AAC 10.070(a)(3) is satisfied for portions of the territory proposed for annexation.

5. REGARDING THE LIKELIHOOD FOR FUTURE GROWTH AND DEVELOPMENT IN THE TERRITORY AND THE ABILITY OF THE CITY TO PLAN FOR AND CONTROL THAT DEVELOPMENT.

The standard set out in former 19 AAC 10.070(a)(5) is met if *"there is a reasonable likelihood that future growth and development will occur within the territory and that annexation of the territory will enable the city to plan for and control that development."*

The City's petition states that the *"area proposed for annexation is expected to experience significant growth in the next few years, especially if the Copper River Highway, the proposed deep water port, and the Power Creek Hydroelectric Project are constructed."*

While Governor Hickel's Administration strongly supports the completion of the Copper River Highway, the project is on hold pending environmental impact studies. However, funding was recently secured for the construction of a road to Shepard Point, site of Cordova's proposed deep water port. It was reported by City officials that under the terms of a settlement with Alyeska Pipeline Service Company concerning the Exxon Valdez oil spill, \$6 million will be made available for the rehabilitation of two miles of existing road and the construction of an additional 4 miles of road to Shepard Point. Funding for the construction of a dock at the site is not yet available. Once constructed, a dock at Shepard Point would reportedly allow deep draft vessels, including cruise ships, to dock at Cordova. Local officials hope that this, in turn, would promote tourism development and other economic diversification in the community.

Aside from these larger projects, the territory outside the boundaries of the City is experiencing moderate and somewhat routine growth and development. For example:

- The Eyak Corporation is implementing its Shareholder Homesite Program which will result in scattered development, particularly around Eyak Lake;
- The University of Alaska is planning the development of a 30 unit subdivision near Heney Creek;
- An individual has applied for a permit from the U.S. Army Corps of Engineers to dredge Heney Creek to construct a new marina;
- Private concerns are planning to construct a new log transfer facility at Channel Island.

The Commission also notes that the entire Eyak Lake area is formally designated as an "Area Meriting Special Attention" under the City of Cordova's Coastal Management plan. This further supports the finding that municipal planning and control is needed in the territory proposed for annexation.

CONCLUSION: The Commission concludes that moderate and routine growth and development is occurring in portions of the territory proposed for annexation. Because there is no municipal planning, platting and land use regulatory authority in this area, the Commission further concludes that annexation will enable the City of Cordova to plan for and control that development. Thus, the standard set out in former 19 AAC 10.070(a)(5) is met.

6. REGARDING THE HEALTH, WELFARE AND SAFETY OF CITY RESIDENTS.

The standard set out in former 19 AAC 10.070(a)(6) is met if *"the health, welfare, or safety of city residents is endangered by conditions existing or developing in the territory and annexation will enable the city to remove or relieve those conditions."*¹⁵

¹⁵ The phrase "health, welfare, and safety" is very broad. In recent decisions of the Commission, the terms have been defined as follows:

HEALTH. State of being hale, sound, or whole in body, mind or soul, well being. Freedom from pain or sickness; the most perfect state of animal life. Not synonymous with "sanitation". The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons (Black's Law Dictionary, 1968).

PUBLIC WELFARE. The prosperity, well being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class. It embraces the primary social interests of safety, order, morals, economic interests, and non-material and political interests. In the development of our civic life, the definition of "public welfare" has also developed until it has been held to bring within its purview regulations for the promotion of economic welfare and public convenience (Black's Law Dictionary, 1968).

SAFETY. Freedom from danger, injury or damage; security (Webster's New World Dictionary, 1982).

Officials of the City of Cordova point to the water and sewer problems noted earlier as their greatest concern over public health. These include concerns over the contamination of Eyak Lake, one of the City's sources of potable water.

DCRA reported that officials of the Alaska Department of Environmental Conservation knew of no specific instance in which the water and sewer problems in the outlying area have resulted in sickness or disease in Cordova. However, they did acknowledge that there is potential for such to occur.

City officials are also concerned that the Eyak Lake watershed will be logged which, in turn, may adversely affect the water quality of Eyak Lake. The Commission notes that State Statutes permit a city to "adopt an ordinance to protect its water supply and watershed, and may enforce the ordinance outside its boundaries" (AS 29.35.020). Such extraterritorial powers, however, are more limited than if the City were to gain full jurisdiction over the watershed.

CONCLUSION: Because Eyak Lake is one of the City of Cordova's sources of potable water, the Commission concludes that the wastewater disposal problems along Eyak Lake represent a potential threat to the health of residents of the City of Cordova. Further, the Commission concludes that the City of Cordova is capable of addressing this threat. As was noted previously, the City of Cordova would be eligible for partial State funding for the construction of a proper wastewater disposal system to serve the area. Bringing the Eyak Lake watershed under the full jurisdiction of the City of Cordova will also help to protect the future quality of that source of potable water. Thus, the Commission concludes that the standard set out in former 19 AAC 10.070(a)(6) is met, particularly with respect to the area from 4.5 to 6 Mile of the Copper River Highway, Power Creek Road on the north side of Eyak Lake and the Eyak Lake watershed.

7. REGARDING THE NEED FOR ANNEXATION IN ORDER TO PROPERLY SERVE RESIDENTS WITHIN THE EXISTING CITY LIMITS.

If the City needs to include any of the territory proposed for annexation in order to extend services to the area currently within its boundaries, the standard set out in former 19 AAC 10.070(a)(7) is satisfied.

City officials indicate that within the next 15 months or so, Cordova's sanitary landfill will have to be replaced. The City is currently studying alternative sites for the new landfill. According to City officials, it is virtually certain that the new landfill site will be located within the territory proposed for annexation.

The potential for development of the Shepard Point deep water port was previously addressed. While State law allows a city to operate a port outside its boundaries, full jurisdiction by the City over any future port at Shepard Point would be preferred.

City officials indicate that they are also exploring the potential for additional sources of water for the community. Among the sites being considered is Middle Arm of Eyak Lake, located within the territory proposed for annexation.

CONCLUSION: The Commission concludes that this standard is met, particularly with respect to Eyak Lake, Shepard Point, and the yet unknown site of the City's future sanitary landfill site.

8. REGARDING WHETHER ANY OF THE PROPERTY IN THE TERRITORY IS OWNED BY THE CITY.

If the City owns property within the territory proposed for annexation, the standard set out in former 19 AAC 10.070(a)(2) is met with respect to that property. The Commission has found no indication that the City of Cordova currently owns any property within the area proposed for annexation. However, it was noted several times during the annexation proceedings that the City of Cordova has yet to receive any lands for future community development from the Eyak Corporation under the terms of 14(c)(3) of the Alaska Native Claims Settlement Act. Under such provisions, the City could receive up to 1,280 acres of land. Presumably, this land would be located within the territory proposed for annexation.

CONCLUSION: The Commission concludes that this standard is not met in any part of the territory proposed for annexation since the City owns no property there. At the same time, the Commission is aware that the future settlement of ANCSA 14(c)(3) claims with the Eyak Corporation will lead to the transfer of up to 1,280 acres of land to the City, most or all of which will presumably be within the territory proposed for annexation.

9. REGARDING WHETHER THE TERRITORY IN QUESTION IS AN ENCLAVE.

If the territory proposed for annexation is surrounded by property already within the corporate limits of the City, the standard set out in former 19 AAC 10.070(a)(1) is satisfied. The Commission finds that none of the territory proposed for annexation is an enclave within the existing boundaries of the City of Cordova.

CONCLUSION: The Commission concludes that this standard is not met.

10. REGARDING OTHER VALID PUBLIC PURPOSES SUPPORTING ANNEXATION.

The standard set out in former 19 AAC 10.070(a)(9) is satisfied if the Commission determines that the annexation proposal serves some legitimate public purpose other than that covered by the standards previously addressed.

The Commission finds that annexation would serve two vitally important public purposes not addressed elsewhere. First, it would enfranchise residents of the territory proposed for annexation. Currently, the 469 residents of the territory proposed for annexation have no formal means of participating in the making of decisions concerning local government operations which affect their everyday lives. For example, the parents of the 90 or so non-resident students who attend the Cordova City schools are ineligible to serve on the Cordova School Board. Those parents lack even the right to vote for school board candidates. Yet, the School Board makes critical decisions affecting the future of their children.

Annexation would extend the following voting rights to qualified residents of the area proposed for annexation:

1. The right to seek office as Mayor, member of the City Council or School Board;
2. The right to seek appointment to standing or special City commissions (e.g. planning commission; board of equalization and board of adjustment);
3. The right to vote for candidates for the office of Mayor, Council and School Board; and
4. The right of referendum, the right of initiative, and the right to vote on propositions of the City of Cordova.

A second valid public purpose is that annexation would extend the boundaries of the City of Cordova to include the entire area served by the City. In the Commission's view, this is highly desirable from the standpoint of a number of public policies. Paramount among these are principles of equity and the need to address State vs. local responsibilities for the delivery of services, particularly in light of declining State revenues.

With respect to the equity issue, a recent study by the State Legislature specifically identified the area which is now proposed for annexation (along with certain others in Alaska) as an example of circumstances which cause "*problems of equitable distribution of decision making authority, of efficiency of daily operation and prudent expenditures of financial resources, and the capacity to make programmatic changes that might lead to improved school performance.*"¹⁶

¹⁶ New Directives in School Performance: The Legislature as Advocate and Guarantor, January, 1991 (p.43).

This same study also noted inequities in the manner in which school funding is provided by the State of Alaska. In the Commission's view, it is clearly inequitable to require property owners within the boundaries of the City of Cordova to contribute substantially to the support of local schools, but to impose no identical requirement upon the property owners of the other side of the invisible corporate boundary line whose children attend the same schools.

The legislative study cited earlier noted that such inequities may obstruct Article I, Section 1 of Alaska's Constitution which stipulates that: ". . . *all persons are equal and entitled to equal rights, opportunities and protection under the law.*"¹⁷ Education is not the only area in which these inequities exist.

With respect to declining State revenues, the Commission believes that it is becoming increasingly necessary for individual citizens and local governments to assume a greater portion of the burden for the delivery of local services. This view is formally reflected in the recently completed report by the "Task Force on Governmental Roles" Among the findings of the Task Force was the conclusion that "[A]ll citizens should bear a fair portion of the cost for basic health, education and public protection services."¹⁸

Similarly, a draft study by the State's Office of Management and Budget calls for "*having all non-organized areas of the state organized*" in an effort to trim State operating costs and provide for greater efficiencies in the delivery of services.¹⁹

CONCLUSION: The Commission concludes that there are "other valid public purposes" for this annexation. These consist of the enfranchisement of the residents of the area proposed for annexation and the extension of the City's boundaries to encompass its actual service area (carrying with it substantial policy benefits such as greater equity and reduced reliance on the State of Alaska for the delivery of local services).

OTHER CONSIDERATIONS

VOTE ON ANNEXATION

Alaska's Constitution places a duty on the Local Boundary Commission to judge an annexation proposal on its merits rather than its political appeal. After carefully examining the purpose and role of the Commission, the Alaska Supreme Court concluded that those who reside or own property in an area to be annexed by a municipality have no vested right that annexation take place only with their consent.²⁰ Specifically, the court stated:

Article X [of the Alaska Constitution] was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee —

** * * lies in placing the process at a level where areawide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.*

¹⁷ Ibid, pp. 55 - 56.

¹⁸ Task Force on Governmental Roles, Final Report, July 10, 1992, (p. 13). The Task Force on Governmental Roles was established by a concurrent resolution of the 1991 Legislature to sort out federal, state and local roles in providing public services.

¹⁹ Draft Report, Governor Hickel's Organizational Efficiency Task Force, July 1, 1992 (page IV-16).

²⁰ Fairview Public Utility District Number One v. City of Anchorage, 368 P.2d 540 (Alaska, 1962).

We cannot assume that they [the delegates to the Constitutional Convention] were insensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.

Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.

The Commission's newly implemented regulations provide guidance concerning which process is best for final approval of an annexation (i.e., election or legislative review). These regulations state:

Territory that meets all of the annexation standards specified in 19 AAC 10.090 — 19 AAC 10.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation.

CONCLUSION: In every case, allowing voters in an area proposed for annexation to give final approval to any annexation has strong political appeal. However, the Commission has a constitutional duty to balance the obvious political appeal of such against the needs and interests of the parties involved. As is so evident in this particular case, the interested parties are not limited strictly to the residents and property owners of the territory proposed for annexation. They also include the residents and property owners within the current boundaries of the City of Cordova, the Cordova City government and the State of Alaska. The balanced interests of all of these parties warrant the use of the legislative review process.

SECTION IV ORDER

On the basis of the foregoing findings and conclusions, the Commission determines that annexation of a smaller territory than that originally petitioned by the City of Cordova has strong merits. Therefore, the Local Boundary Commission hereby orders as follows:

1. That the June 4, 1992 annexation petition of the City of Cordova is approved with amended boundaries described as follows:

Beginning at the northeast corner of protracted Section 4, T15S, R2W, Copper River Meridian (CRM);

thence, south to the southeast corner of protracted Section 28, T15S, R2W, CRM;

thence, east to the northeast corner of the northwest 1/4 of the northeast 1/4 of protracted Section 33, T15S, R1W, CRM;

thence, south to the southeast corner of the southwest 1/4 of the southeast 1/4 of protracted Section 21, T16S, R1W, CRM;

thence, northwesterly, in a straight line, to the northwest corner of protracted Section 1, T16S, R3W, CRM;

thence, west, along the north boundary of protracted Section 2, T16S, R3W, to a point on the divide along the Heney Range separating the drainage into Orca Inlet from the drainage into the Copper River Delta and the Gulf of Alaska;

thence, southwesterly along said divide to Heney Peak;

thence, westerly in a straight line to the beginning of Hartney Creek;

thence, westerly along the thread of Hartney Creek to the point where it enters Hartney Bay;

thence, northerly and westerly along the line of mean high tide of the north shore of Hartney Bay to Bluff Point;

thence, meandering along the line of mean high tide to the intersection with the east boundary of protracted Section 1, T16S, R4W, CRM;

thence, north to a point in Orca Inlet at the northwest corner of the southwest 1/4 of the southwest 1/4 of protracted Section 31, T15S, R3W, CRM;

thence, northeasterly, in a straight line, to a point in Orca Inlet at the northwest corner of the southeast 1/4 of protracted Section 24, T14S, R3W, CRM;

thence, east to the line of mean high tide on Nelson Bay;

thence, meandering southwesterly along the line of mean high tide of Nelson Bay to the intersection with the west boundary of protracted Section 19, T14S, R2W, CRM;

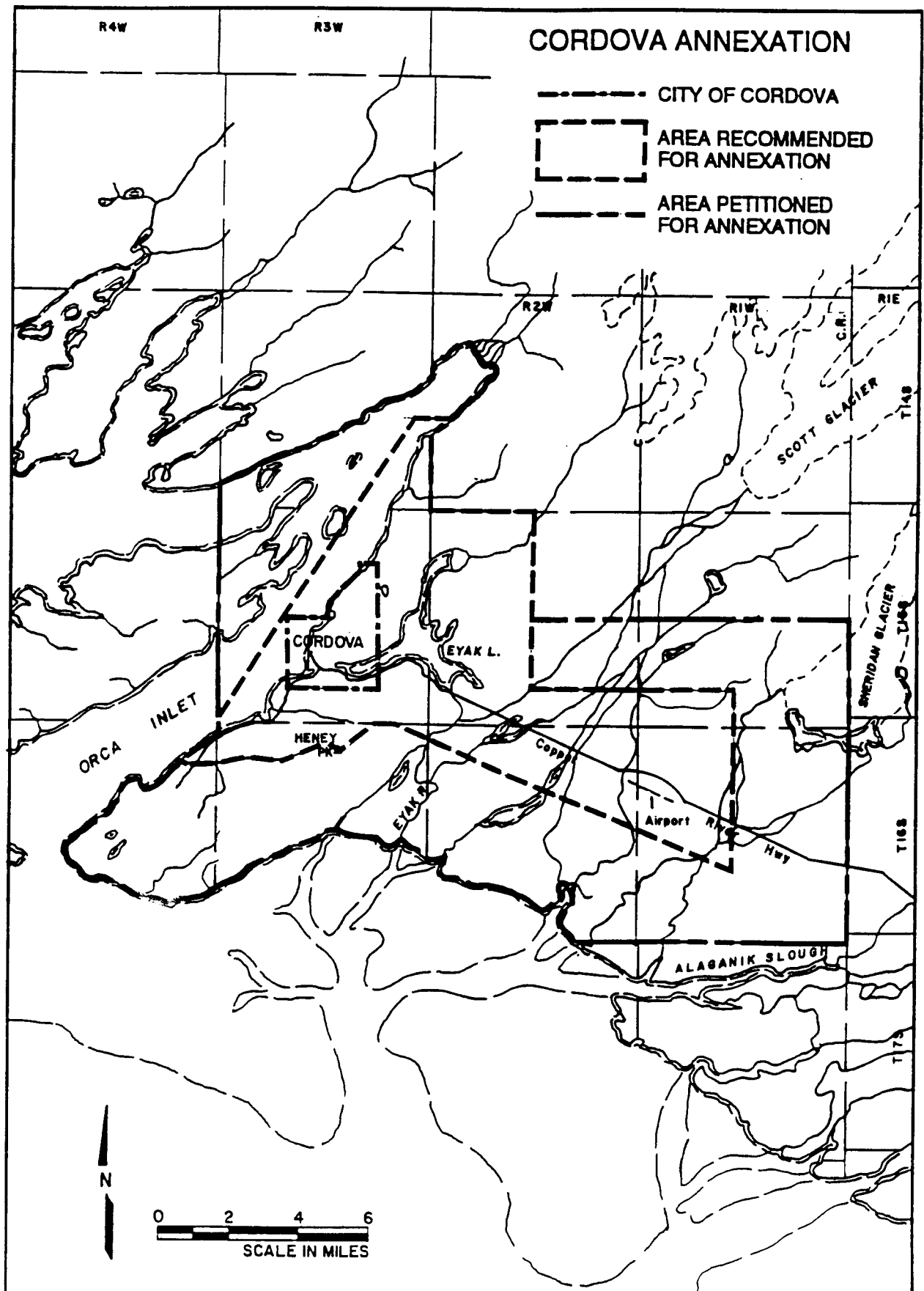
thence, south, to the southeast corner of protracted Section 36, T14S, R3W, CRM;

thence, east to the northeast corner of protracted Section 4, T15S, R2W, the point of beginning; containing 74.58 square miles, more or less, all in the Cordova Recording District, Third Judicial District, State of Alaska.

Excluding therefrom, the territory currently within the boundaries of the City of Cordova, comprising 6.35 square miles, more or less. The net territory approved for annexation comprises 68.23 square miles, more or less.

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The territory petitioned for annexation and the amended boundaries approved for annexation are shown on the following map:




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2. That a formal recommendation for the annexation of the territory in question be submitted in accordance with Article X, § 12 of the Alaska Constitution to the next regular session of the legislature. That is, the recommendation is to be submitted to the First Regular Session of the Eighteenth Alaska Legislature on or before January 20, 1993.
3. That, the annexation take effect only upon:
 - (a) The passage of forty-five days from the date of presentation of the Commission's recommendation to the legislature (or the adjournment of the session, whichever is earlier) without disapproval of the recommendation by the legislature; and
 - (b) The filing of documentation with the Department of Community and Regional Affairs showing that the City of Cordova has complied with 42 U.S.C. 1973c (Voting Rights Act of 1965) regarding this annexation.

APPROVED IN WRITING THIS 8TH DAY OF JANUARY, 1993.

LOCAL BOUNDARY COMMISSION


By: Darroll Hargraves, Chairperson

Attest:


Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within 20 days after this written statement of decision has been mailed to the petitioner and any respondents, a person may file a request for reconsideration of the decision.²¹ The request must describe in detail, the facts and analyses that support the request for reconsideration. If the Commission takes no action on a request for reconsideration within 30 days after the date that this written decision was mailed to the petitioner and any respondents, the request for reconsideration is automatically denied. If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration is allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days from the date this written decision was mailed or delivered.

²¹ However, once the Local Boundary Commission submits a formal recommendation to the legislature for the annexation of the territory in question, it no longer has jurisdiction to reconsider or rescind its decision.